

## EXHIBIT “A”



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Dockets Management Branch  
FHA-305  
Food and Drug Administration  
Room 4-62  
5600 Fishers Lane  
Rockville, Maryland 20857

Re: Docket No. 86P-0297/CP (Proposal to Amend Standards of Identity) -  
Cacao Products

Dear Sir:

Hershey Foods Corporation is a major chocolate and confectionery manufacturer in the United States with world-wide distribution of its product lines.

As the largest chocolate manufacturer in the United States, Hershey has a keen interest in ensuring that the standards of identity for cacao products reflect current social, economic and technological circumstances and provide a flexible guidepost for future development of the industry nationally and internationally. It is with this in mind that we would like to submit the following comments relative to the Food and Drug Administration's proposal to amend the standards of identity for cacao products which was published on January 25, 1989 (54 Fed. Reg. 3615).

In this era of technological innovation, many have viewed food standards as a factor which limits the ability of food manufacturers to innovate in areas where, but for such standards, consumers might be expected to benefit through the availability of a wider variety of food products. The National Research Council for example, in its 1988 report "DESIGNING FOODS", criticized food standards generally as being too restrictive and inflexible. It is also recognized, however, that food standards have been an effective means for ensuring consumer health and safety and for preventing economic adulteration. Such standards have been and are useful in promoting public confidence in the food supply by preventing substitution of cheaper food ingredients for more expensive ingredients that consumers expect to be present in a food product. With these factors in mind, we believe it is appropriate that the current standards of identity for cacao products be amended to include a standard for "white chocolate." A copy of the standard which we propose for addition to the regulation is attached to this letter as Exhibit A.

EXHIBIT B

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The justification supporting adoption of this new standard is essentially two-fold:

(1) In this unique instance, we believe that the absence of a standard of identity for white chocolate has proven to be a limiting factor in terms of the introduction of new products to meet consumer demand; and

(2) We believe that there exists a genuine likelihood of consumer confusion over the content of products which are often referred to informally as white chocolate but which may or may not contain any cacao derived ingredients.

There is no present standard of identity for "white chocolate." Currently, virtually all uses of the term "white chocolate" would arguably be prohibited by the current and proposed standards for "chocolate," which prescribes the presence of ground cacao nibs. This restrictive requirement has acted as a practical deterrent to companies developing and marketing "white chocolate" products in the United States. When such products have been introduced and marketed in the U.S., companies have had to resort to labeling such products with fanciful names to avoid the standardized labeling issues. Exhibit B contains copies of various labels for products that are or have been marketed in the United States and which exemplify this fact. Note that in at least one of these examples, the distributor has referred to the product as "white chocolate." Another example of the common use of this term in association with this type of product is found in the article in Exhibit C which appeared in January, 1989 in the Springfield, Illinois State Journal Register. Note, in particular, the consumer's quandary that is referenced in the article that "shoppers searching for [white chocolate] will find it only under an alias." In many cases, the use of fanciful names obscures the true nature of the product. Consumers who might expect to be purchasing a "chocolate" or "white chocolate" product may, in fact, be purchasing a coating-type product manufactured with cheaper ingredients made from other oils and/or fats and which contains little or no cacao ingredients.

In contrast, in other countries, where a standard of identity for "white chocolate" exists, and where a minimum amount of cocoa butter is required by law, consumers have available to them a variety of easily recognizable products. Exhibit D contains copies of labels from several of these foreign products. Consumers in such countries are better able to evaluate the quality and value of the products they purchase without having to resort to analysis of ingredient statements.

Many countries that have adopted standards for cacao products have also recognized and established a standard for "white chocolate." These include Australia, Austria, Belgium, Denmark, France, Ireland, Italy, Luxemburg, Netherlands, Spain, Switzerland, United Kingdom and West Germany.



"White Chocolate" has been defined by the European Economic Community ("EEC") Directive 75/155/EEC as:

"the product free of colouring matters, obtained from cocoa butter, sucrose and from milk or solids obtained by partially or totally dehydrating whole milk or partially or wholly skimmed milk, and possibly, from cream, partially or wholly dehydrated cream, butter or butter fat; it shall have the following characteristics:

- |   |                    |
|---|--------------------|
| - cocoa butter  | not less than 20%  |
| - total dry milk solids derived from ingredients listed above | not less than 14%  |
| - butter fat  | not less than 3.5% |
| - sucrose   | not more than 55%  |

Adoption of the standard as proposed would result in greater consistency in international regulation of cacao products while at the same time ensuring that consumers are buying and consuming "the real thing." Such action would also be consistent with Commissioner Young's stated intention of seeking harmonization of U.S. standards with those of the European community in anticipation of 1992. It might also be expected that a consistent standard would enhance American manufacturers' ability to compete in world markets.

A white chocolate standard as proposed will also tend to promote consumer confidence in the food supply by establishing a readily understandable product identity for a class of products that are becoming more popular with consumers in the U.S. Since 1987, at least 47 new "white chocolate" confections have been introduced worldwide. At least 18 such products have been introduced in the United States. These figures do not include product applications in the traditional ice cream and dessert categories. Consumers of "white chocolate" products should not have to resort to looking at technical ingredient statements to determine if such products contain real cacao ingredients or whether they are manufactured using cheaper ingredients from other sources. Products which are commonly referred to as "white chocolate" should be required to contain a minimum level of cacao ingredients. Adoption of the proposed standard will eliminate the need for fanciful name designations which reveal little about the true nature of the product. In addition, the current level of consumer confusion and misunderstanding will be diminished.

The proposed standard is also in line with the National Research Council's recent suggestions for improving food standards generally wherein the Council recommended, in part, that food standards be made consistent and more flexible. The ingredient requirements being proposed are those which we believe are minimally necessary to maintain the characteristics which consumers fairly expect from "white chocolate." A wide variety of optional and safe dairy ingredients, emulsifiers, flavorings and antioxidants would be permitted. In this respect, this proposed standard would be consistent with

the approach suggested by FDA in the pending proposal to amend the standards for cacao products. More importantly, the flexibility that is built into this proposed standard will allow manufacturers to develop and market a variety of "white chocolate" products that are currently in demand by consumers.

For the reasons stated above, we request that FDA amend the current food standards governing cacao products to include a new standard for "white chocolate" as proposed herein. Thank you.

Sincerely,



Barry L. Zoumas

BLZ/sf

attachments